

**NEW YORK CITY GREEN INFRASTRUCTURE GRANT PROGRAM
2017 FUNDING AGREEMENT**

This Funding Agreement ("Agreement") is made and entered into as of _____, 201____, by and between the City of New York (the "City"), acting through its Department of Environmental Protection ("DEP"), having an office at 59-17 Junction Boulevard, Flushing, NY 11373, and _____, the property owner (the "Grantee") of the property located at _____ ("Premises").

WHEREAS, the New York City Department of Environmental Protection (DEP) established the Green Infrastructure Grant Program (GIGP) in order to allocate funding for qualified projects which use green infrastructure to manage stormwater runoff in the City.

WHEREAS, this Funding Agreement (Agreement) acknowledges that the Grantee submitted to DEP a proposal to install and maintain a green infrastructure project within non-city owned property, and DEP has determined that the Grantee's proposal will meet the GIGP goals and provide significant benefit to the City and has chosen the Grantee's proposal for this purpose.

NOW, THEREFORE, the parties, in consideration of the mutual agreements contained herein, agree as follows:

After DEP has accepted a Final Design and this Agreement is registered, DEP will issue a Notice to Proceed letter. This Agreement shall be effective when registered pursuant to Section 328 of the New York City Charter and shall remain in effect for a period of twenty-five (25) years from the date of the Notice to Proceed letter, or twenty (20) years from the date of the Final Acceptance Letter whichever is sooner. This Agreement may be extended in writing upon the mutual consent of the parties.

GENERAL OBLIGATIONS:

1. Grantee shall install and maintain a insert general description of the project (the "Project") in accordance with the Final Design and as more fully described in the scope of work attached as Appendix B ("Scope of Work") and with the maintenance plan ("Maintenance Plan") attached as Appendix D.
2. Grantee shall comply with all provisions in the General Requirements, Appendix A attached to this Agreement.
3. Grantee shall conduct site investigations and submit designs to DEP for review and acceptance in accordance with the instructions provided by DEP at the time

of announcement of selected grantees. Said instructions, entitled “Grantee Guide” are hereby incorporated by reference.

4. Grantee shall complete a Site Safety Plan to DEP prepared by a Certified Safety Professional (CSP) or a Certified Industrial Hygienist (CIH). The Grantee is responsible for ensuring health and safety requirements during construction and for the life the project. Grantee and contractor employees shall comply with all safety regulations governing the Site Safety Plan.
5. Grantee must obtain all necessary permits required for construction and operation of the Project.
6. Grantee acknowledges that all plans and specifications shall be certified by a Professional Engineer, Registered Architect or Registered Landscape Architect currently licensed in New York State.
7. Grantee shall complete all construction within twelve (12) months from the Notice to Proceed date. Should DEP determine that the Grantee has failed to properly proceed with or complete the Project as required herein, DEP shall provide to Grantee such notice and an opportunity to cure. Grantee shall have a period of thirty 30 days to cure unless the parties agree in writing to a longer period of time. In the event Grantee fails to cure, DEP may proceed in accordance with Section F of Appendix A.
8. Grantee shall submit quarterly construction reports beginning once construction commences and continuing through the Final Acceptance. The reports shall be submitted no later than seven (7) days from each due date and shall contain the status of Project construction during the previous time period. Construction records and photographs shall be included. Where the anticipated period of construction will be less than three (3) months, the reports shall be provided every four (4) weeks.

MAINTENANCE:

1. The maintenance period (“Maintenance Period”) shall begin and shall remain in effect for a period of twenty (20) years beginning on the date of the Final Acceptance Letter.
2. Grantee shall submit a Maintenance Plan, at the time of the 90% design submittal, for review and acceptance by DEP. The Maintenance Plan shall be for a period of twenty (20) years and shall include all maintenance requirements including labor, equipment, materials, and frequencies for the Maintenance Period.
3. Grantee agrees that during the Term of this Agreement and the Maintenance Period, it will maintain the Project and keep it in good repair with full functionality for its intended purpose. Moreover, Grantee shall ensure that the

Project shall be kept free and clear of any and all obstructions that would impede the Project's proper functioning.

4. Quarterly and yearly maintenance reports shall be submitted for a period of 36 months from the issuance of the Final Acceptance Letter. These reports shall be submitted to DEP in a previously agreed upon format and transmitted electronically in MS Word or MS Excel format.

THE DECLARATION OF RESTRICTIVE COVENANT:

1. A Declaration of Restrictive Covenant in the form provided to the Grantee by DEP (the "Declaration") shall be filed against such property with the Office of the City Register of the City of New York, County of [REDACTED]. It shall be a condition of disbursement of any funds pursuant hereto that such Declaration of Restrictive Covenant shall have been recorded against the Premises and evidence thereof shall have been provided to DEP.
2. The Declaration shall remain in effect for the term of this Agreement and shall ensure the maintenance and care of the Project. The provisions of Section C (3), of Appendix A, shall survive the termination or expiration of this Agreement.

MONITORING (IF APPLICABLE):

1. If selected to receive funds for monitoring equipment and reporting, the monitoring period "Monitoring Period" shall begin and remain in effect for a period of 36 months from the issuance the Final Acceptance Letter. Grantee shall submit a monitoring protocol, at the time of the 90% design submittal, for review and acceptance by DEP. This protocol shall include procedures for recording Project monitoring data on a monitoring database that is accessible by DEP as well as schedules and requirements for submitting monitoring reports. The input of data on the monitoring database and submission of reports is the responsibility of the Grantee.

INVOICING AND REIMBURSEMENT

1. DEP shall remit to Grantee an amount not to exceed \$ [REDACTED] Dollars ("Grant Award") in full consideration for the satisfactory completion of the Project. The Grant Award shall be payable in arrears and on a reimbursement basis.
2. Grantees shall submit invoices to DEP for review and acceptance in accordance with the instructions provided by DEP at the time of announcement of selected grantees. Said instructions, entitled "Grantee Guide" are hereby incorporated by reference.

3. Funding provided pursuant to this Agreement shall be used only to pay third-party vendors for eligible expenses. Funds shall not be used to pay or reimburse Grantee for its internal costs, including but not limited to its employee salaries, overhead or any form of administrative fee.
4. All payments shall be made to the Grantee unless the Grantee provides to DEP a valid assignment which authorizes a third-party contractor to receive payment under this Agreement.
5. Within ten (10) days of the issuance of the Notice to Proceed and upon receipt of an invoice for all eligible expenses paid to date, DEP will process such invoice for payment. This invoice must include eligible costs and expenses where monies have been paid to third parties.
6. Requests for advance payments will not be approved.
7. If the final costs of the Project are less than the Grant Award, the difference will not be disbursed to the Grantee.
8. DEP shall only reimburse Grantee for payments that, in DEP's sole discretion, are for the construction of the project.
9. If capital funds are used for reimbursement, then DEP shall only reimburse Grantee for payments in accordance with all laws, regulations and directives governing the payment of such funds.
10. Any allowance included in the Final Design Estimate will not be reimbursed unless provided sufficient justification and all documentation, including invoices, have been reviewed by DEP.

PROJECT CLOSE-OUT:

1. Grantee shall provide a Certification of Construction Completion at the close of the Project stating that the Project was built in accordance with Final Design and specifications.
2. DEP shall issue a Final Acceptance Letter after the Project has been inspected, punch-list items have been corrected, and the final As-Built records have been submitted by the Grantee.
3. DEP will not reimburse the last invoice until the Final Acceptance Letter has been issued.

PRESS and NOTICES:

1. The Grantee and its officers, employees, and agents shall indicate in any statements to the press or in any materials for publication in any media of communication (print, news, television, radio, Internet, etc.) that the Project was funded wholly or in part by DEP.
2. All notices to be sent in accordance with this Agreement shall be sent to the following addresses:

If to DEP:

General Counsel, Bureau of Legal Affairs
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, New York 11373

And,

Bureau of Environmental Planning and Analysis, Bureau of Sustainability
C/O Green Infrastructure Grant Program
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, New York 11373

If to Grantee:

LEAD PERSON
TITLE
ORGANIZATION
ADDRESS
PHONE
EMAIL

Representatives. Margot Walker, Managing Director, Green Infrastructure Partnerships for the DEP Bureau of Environmental Planning and Analysis, and **LEAD PERSON, TITLE** of Grantee, are the authorized representatives and will be responsible for the administration of this Agreement.

In WITNESS WHEREOF, the individuals listed below are authorized to sign and execute this Agreement between their respective Agencies and Organizations, on the date appearing below their respective signatures.

The City of New York

By: _____

GRANTEE

By: _____

Title: _____

ACKNOWLEDGEMENT BY COMMISSIONER

STATE OF NEW YORK
SS:
COUNTY OF QUEENS

On the ____ of _____ the year 201_ before me, the undersigned, a Notary Public in
and for said State, personally appeared _____ personally known to me
or proved to me on the basis of satisfactory evidence to be the individual whose name is
subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her capacity, and that by his/her signature on the instrument, the individual,
or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF NEW YORK,

SS:

COUNTY OF _____

On the ____ of _____ the year 201_ before me, the undersigned, a Notary Public in

and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT BY PARTNERSHIP

STATE OF NEW YORK

SS:

COUNTY OF QUEENS

On the ____ of _____ the year 201_ before me, the undersigned, a Notary Public in

and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ACKNOWLEDGEMENT BY INDIVIDUAL

State of NEW YORK, County of _____ SS:

On the ____ of _____ the year 201_ before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

APPENDIX A
GENERAL REQUIREMENTS

A. Ownership and Intellectual Property Rights.

1. Data and Reports. If applicable, all scientific or technical monitoring data collected or reports created, developed, produced or generated in connection with the Projects shall be jointly owned by the City and the Grantee. Grantee may not produce any documentation based upon this data or reports without DEP's prior written approval and acknowledgment that the Project was funded by DEP.
2. Designs. Grantee agrees that the City shall have unrestricted rights to use the designs selected for participation in the GIGP for any future projects or purposes at no additional cost. Any patentable discovery or innovation arising out of this Agreement, as well as all information, designs, specifications, knowledge, data or findings shall be made available to the City, at no cost to the City, for use by the City or its agents, representatives or licensees.
3. Copyrights, Trademarks, Patents and Inventions. Intellectual property rights associated with any photograph, deliverable, or other material in connection with or produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall remain the property of the party that created them, and said party shall retain all such rights therein including, but not limited to, copyright, trademark and patent rights. Notwithstanding the foregoing, the City shall, with regard to each such intellectual property right, be deemed to have been granted a non-exclusive, perpetual, irrevocable and royalty-free license ("License") to use, reproduce, publish, modify, and create derivative works for all reasonable purposes.
4. Reporting Requirements. The Grantee shall promptly and fully report to the DEP any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Grantee shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
5. Pre-existing Rights. In no case shall Section 3 apply to, or prevent the Grantee from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material that existed prior to or was developed or discovered independently from the activities directly related to this Agreement ("Grantee Property"), provided that Grantee Property incorporated in the Project shall be included in the aforementioned License.
6. Indemnification. The Grantee shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Grantee of any copyright, trade secrets, trademark or

patent rights or any other property or personal right of any third party by the Grantee and/or its contractors and any subcontractors in the performance of this Agreement. The Grantee shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Grantee, the City shall be partially indemnified by the Grantee to the fullest extent permitted by Law.

B. Insurance

1. Agreement to Insure. The Grantee shall ensure continuous insurance coverage in the manner, form, and limits required by this section (B) throughout the term of the Agreement. The Department will not issue a Notice to Proceed until the Grantee provides proof of insurance in accordance with this section (B)(2)(c) and (B)(3)(b).

2. Commercial General Liability Insurance.

(a) The Grantee shall maintain Commercial General Liability Insurance that:

- i. provides coverage in the amount of at least \$1,000,000 per occurrence for bodily injury (including death) or property damage, \$2,000,000 in the aggregate, and;
- ii. is at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01;
- iii. is "occurrence" based rather than "claims-made";
- iv. The policies of insurance required under this Article 4(C) shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and

(b) There shall be no self-insurance program or self-insured retention above ten thousand dollars with regard to Commercial General Liability Insurance unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City, including its officials and employees, with all rights that would be provided by traditional insurance required under this section (B), including but not limited to the defense obligations that insurers are required to undertake in liability policies.

(c) The Grantee shall provide proof of Commercial General Liability Insurance as follows, either:

i. a certificate of insurance (such as an ACORD form) and a certification of insurance broker or agent in the form attached; or

ii. a complete copy of the Commercial General Liability insurance policy as certified by an authorized representative of the issuing insurance carrier.

(d) The Grantee shall provide the City with a copy of the Commercial General Liability Insurance policy upon demand of the Commissioner or the City Corporation Counsel.

(e) The Grantee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under Commercial General Liability Insurance (whether or not such insurance is actually procured or claims are paid thereunder).

3. Workers' Compensation, Disability Benefits, and Employer's Liability Insurance.

(a) If required by law, the Grantee shall maintain Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance on behalf of, or with regard to, all employees providing services relating to the Project.

(b) The Grantee shall provide to the Department proof of Workers' Compensation and Disability Benefits Insurance or proof of an exemption on a form acceptable to the New York State Workers Compensation Board. ACORD forms are not acceptable proof.

4. Premiums. The Grantee shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

5. Notice of Cancellation or Termination. In the event the Grantee receives notice, from an insurance company or other person, that any insurance policy required herein shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Grantee shall promptly forward a copy of such notice to both the Commissioner New York City Department of Environmental Protection, 59-17 Junction Boulevard, Flushing New York 11373 and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Grantee shall ensure that there is no interruption in the insurance required herein.

C. Protection of Persons and Property and Indemnification.

1. Reasonable Precautions. The Grantee and its contractors and subcontractors, if any, shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Grantee's and/or its contractors and subcontractors' operations under this Agreement.
2. Protection of City Property. The Grantee assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Grantee, its officers, employees, agents or contractors or subcontractors, if any.
3. Indemnification. The Grantee shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with the Project. This obligation to defend, indemnify and hold harmless shall survive completion of the construction of the Project and shall extend to the operation and maintenance of the Project for its full life and existence. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Grantee, the City shall be partially indemnified by the Grantee to the fullest extent permitted by Law.

D. Labor.

1. Independent Entity Status. The Grantee and the DEP agree that the Grantee is an independent entity and not an employee of the DEP or the City. Accordingly, neither the Grantee nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.
2. Employees. All persons who are employed by the Grantee and all consultants or independent contractors who are retained by the Grantee to perform services under this Agreement are neither employees of the City nor under contract with the City. The Grantee, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Grantee, or any officer, employee, or agent of the Grantee, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership

- or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.
3. **Minimum Wage.** Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Grantee in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.
 4. **Unlawful Discriminatory Practices: Admin. Code § 6-123.** As required by Admin. Code § 6-123, the Grantee will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Grantee shall include a provision in any agreement with a first-level contractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.
 5. **Non-Discrimination: Admin. Code § 6-108.** If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Grantee agrees, as required by New York City Administrative Code § 6-108, that:
 - a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
 - b. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.
 - c. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.
 - d. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.
 6. **Non-Discrimination: E.O. 50 -- Equal Employment Opportunity.** This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Grantee agrees that it will not discriminate unlawfully against any

employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment.

E . Investigations Clause

1. The Grantee agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
2. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;
3. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
4. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
5. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.
6. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

- a. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
 - b. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
7. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (c) and (d) below, in addition to any other information that may be relevant and appropriate:
 - a. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
 - b. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
 - c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
 - d. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph 6 above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (J) (4) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
8. Definitions.
 - a. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

- b. The term “person” as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
 - c. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
 - d. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
9. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Grantee fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Grantee, or affecting the performance of this Agreement.

F. Events of Default.

Upon the occurrence of a failure to comply with any provision of this Agreement that is not cured within thirty (30) days following receipt of such notice from DEP, DEP may exercise any right, power or remedy permitted to it by law, in equity, or under this Agreement including, without limitation:

1. Terminating this Agreement, which shall, upon written notice, be effective immediately and in which event DEP shall not be required to make further disbursements of the Grant Award.
2. Demanding repayment of all or any portion of the Grant Award, whereupon the amount demanded together with interest thereon from the date of DEP’s disbursement thereof shall become immediately due and payable without any further notice or demand.
3. Enforcing Grantee’s obligations under this Agreement administratively or by equitable remedies of specific performance, declaratory judgment or injunction.

G. Miscellaneous.

1. Grantee shall require all its Contractors hired pursuant to the Scope of Work to agree to the terms and conditions set forth in this Agreement. Grantee shall notify DEP of all Contractors and Sub-Contractors hired to complete the project.
2. Where the Grantee shall assign payment to a third-party contractor, Grantee shall submit to DEP the executed agreement between the Grantee and the Contractor regarding work to be performed in connection with the Project (the “Assignment Agreement”). The Assignment Agreement is attached hereto as Appendix G.
3. Grantee shall remain primarily responsible for all work and services provided under this Agreement regardless of whether the Grantee has entered into a Contractor Agreement.

4. Grantee acknowledges that there is no lease on the property with terms that would prevent the owner from making the commitments contained herein. If such a restrictive lease does exist, and the owner cannot, therefore, make the aforementioned affirmation, the lessor must be a co-applicant for the grant.
5. No Third Party Rights. The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Grantee or the City or their respective officers and employees.
6. Claims.
 - a. Choice of Law. This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Grantee, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.
 - b. Jurisdiction and Venue. The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Grantee initiates any action in breach of this Section, the Grantee shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.
 - c. No Claim against Officers, Agents or Employees. No claim shall be made by the Grantee against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.
 - d. General Release. The acceptance by the Grantee or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Grantee, of which the Grantee was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.
 - e. No Waiver. Waiver by either the DEP or the Grantee of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties.
 - f. Precedence. In the event of an express or implied conflict between the terms and conditions of the documents that comprise this Agreement, the terms and conditions set forth in Appendix A shall control. Thereafter the following order of priority shall govern: (1) the Funding Agreement (2)

Appendix E “Declaration of Restrictive Covenant”, (3) Appendix B “Scope of Work”, (4) Appendix C “Final Design Estimate” (5) Appendix D “Maintenance”, and if applicable (5) Appendix F “Monitoring” and (6) Appendix G “Agreement between Grantee and Contractor”. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

7. Applicable Laws.
 - a. All Legal Provisions Deemed Included. Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.
 - b. Severability / Unlawful Provisions Deemed Stricken. If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.
 - c. Compliance with Law. The Grantee shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.
8. Entire Agreement. This Agreement, including the Funding Agreement prior to Appendix A, this Appendix A (General Requirements), Appendix B (Scope of Work), Appendix C (Final Design Estimate), Appendix D (Maintenance Plan), and Appendix E (Restrictive Declaration), Appendix F (Monitoring), if applicable, Appendix G (Assignment Agreement) if applicable, constitutes the entire agreement between DEP and Grantee concerning the subject matter hereof, and supersedes all prior negotiations, representations, contracts and agreements concerning such subject matter. This Agreement may be amended only in writing signed by DEP and Grantee.
9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall be one document binding on all the parties.

APPENDIX B
SCOPE OF WORK

APPENDIX C
FINAL DESIGN ESTIMATE

**APPENDIX D
MAINTENANCE**

APPENDIX E

DECLARATION OF RESTRICTIVE COVENANT

SCHEDULE 1

Existing Mortgages

Mortgagee (name and address)	Outstanding Amount	Maturity Date
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APPENDIX F
MONITORING PROTOCOL (if applicable)

APPENDIX G
ASSIGNMENT AGREEMENT